



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

147522

REPLY TO THE ATTENTION OF

January 18, 1996

Philip M. Moilanen
Bullen, Moilanen, Klaasen & Swan
402 South Brown Street
Jackson, Michigan 49203

RE: Albion-Sheridan Township Landfill Site
Albion, Michigan

Dear Mr. Moilanen:

This letter responds to your letter to the undersigned dated January 10, 1996, requesting a response to Decker Manufacturing's ("Decker") request for "consideration of a settlement on a de minimis basis."

As you know, Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9622(g) provides for de minimis settlements "[w]henver practicable and in the public interest, as determined by the President . . ." Since Decker is not an "owner" of the Site, as that term is defined under Section 101 of CERCLA, 42 U.S.C. § 9601, it could only fall within Section 122(g)(1)(A), so long as the criteria in subpart A are met. Such criteria require that the amount of hazardous substances disposed by the generator be minimal, and that the toxic or other hazardous effects of the hazardous substance disposed is minimal. In both cases, "minimal" is determined relative to other hazardous substances disposed by other Potentially Responsible Parties at the Site.

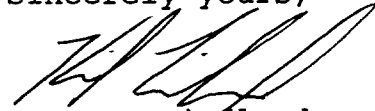
U.S. EPA has evaluated Decker's contribution of hazardous substances to the Site and determined that such contribution fails to meet the criteria set forth in Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). Specifically, based on currently available information, Decker has contributed well over .1% of the hazardous substances found at the Site. Furthermore, Decker arranged for the disposal of "used oil and sludge", the toxicity of which is not "minimal" in comparison with other hazardous substances disposed at the Site.¹

¹ Decker previously asserted the "petroleum exclusion" defense. EPA then requested that Decker substantiate this claim by providing chemical analysis of the "used oil and sludge" to show that it contained no hazardous substances. To date, no such information has been received by EPA.

If Decker has information which it believes contradicts the conclusions set forth above, please forward that information to the undersigned as soon as practicable so that U.S. EPA may reevaluate Decker's contribution of hazardous substances at the Site in the context of Section 122(g) of CERCLA.

If you have any questions regarding this matter, please do not hesitate to call me at (312) 886-6831.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'K. Lindland', written over a horizontal line.

Kurt N. Lindland
Assistant Regional Counsel

cc: Leah Evison/EPA/Superfund